



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**Civil Suit 514 of 1996**

**SAMSON MUGO SIIYA.....PLAINTIFF**

**VERSUS**

**ISMAEL SULEIMAN JAMA.....1<sup>ST</sup> DEFENDANT**

**IBRAHIM SULEIMAN YAIRA (SON)..... 2<sup>ND</sup> DEFENDANT**

**ELLY PAPOI OTWANI..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

By way of an amended plaint the plaintiffs Samson Mugo Siiya instituted this suit against defendants. The plaintiffs claim is based on allegation that on 5<sup>th</sup> August 1996 he was unlawfully assaulted and illegally arrested by the defendants and placed in the District Officer's offices at the behest of the 1<sup>st</sup> defendant. The plaintiff's motor vehicle registration No. KSE 872 was also unlawfully impounded by the defendants and in the course of towing the motor vehicle, it was damaged and the plaintiff also lost 11 bags of wheat. The plaintiff has also sought for compensation for general damages for pain, suffering, and loss of motor vehicle, special damages and cost of the suit.

During the hearing of this matter, the plaintiff gave evidence and detailed how on the 4<sup>th</sup> day of August, 1996 he had purchased 11 bags of wheat, he had parked his motor vehicle Reg. No.KSE 872 by the road side near Gregory centre to repair a puncture. The defendant with his son the 2<sup>nd</sup> defendant and the 3<sup>rd</sup> defendant an Administration Police, pounced on the plaintiff, beat him up until he became unconscious. They bundled him into the 1<sup>st</sup> defendant's vehicle and with the help of the 3<sup>rd</sup> defendant the plaintiff was locked up at Ol loruga Division Headquarters for the night. The 1<sup>st</sup> defendant alleged that the plaintiff had stolen his wheat which the 1<sup>st</sup> defendant impounded after the plaintiff was arrested and locked up.

The defendants towed the plaintiff's motor vehicle with his tractor and in the course of doing so, the motor vehicle was damaged. The plaintiff produced an assessment of the estimate of the repairs required for the damages on his vehicle. The assessment was done by Menengai Agricultural Auto parts on 26<sup>th</sup> September, 1998. The damage was assessed at the cost of kshs.201, 700/=.

The plaintiff reported the matter to the police. He was issued with a P3 form. He was treated at the Narok District Hospital for the injuries sustained. The plaintiff produced a medical report dated 14<sup>th</sup> January, 1998 which was compiled by Dr. Kigen the Medical Officer In charge of Narok District Hospital. According to the report, the plaintiff suffered bruises on the forehead, bruises on the right

cheek and on the right temple and some tenderness. The plaintiff was treated and has healed except for the scars on the forehead, right cheek and he still experiences shoulder pains.

**PC Alfred Odhiambo (PW2)** who was at the material time based at the Narok Police Station testified that he received the report of the assault; he recorded a statement from the plaintiff and issued him with a P3 form. **PW2** also carried out investigations. He confirmed that the plaintiff had visible injuries on the face and on the right cheek. He also established that the plaintiff was locked up by the Administration Police. However, he said he did not find sufficient evidence to institute criminal charges against the defendants. **Kasompe Ole Ronko (PW3)**, a businessman in Narok Town testified that on 4<sup>th</sup> August, 1996, he sold to the plaintiff **11 bags** of wheat which the plaintiff transported in his car.

The defence did not offer any evidence although they had filed a statement of defence in which liability was denied. The defendants also denied having assaulted the plaintiff or causing his unlawful imprisonment. Counsel for the plaintiff filed written submissions in which he has urged the court to find that the plaintiff's arrest was actuated by malice, it was illegal and therefore the court should find that the plaintiff's liberty was unlawfully curtailed. The plaintiff was also assaulted unlawfully for which he suffered personal injuries sustained through the unlawful assault and he should be awarded general and exemplary damages for pain, suffering and for the false imprisonment.

The plaintiff also lost 11 bags of wheat which caused him kshs.1, 500/= per bag as well as the costs of the repair of the motor vehicle. Counsel also put forward several decided authorities which I will take into account in the course of analyzing the above evidence. It was the plaintiff's counsel submission that the plaintiff should be awarded a total of kshs. 1,776,800/= being general exemplary, general and special damages.

The issue to be determined in this matter is; firstly, whether the plaintiff has proved his case to the required standard. And secondly the quantum of damages. The plaintiff suffered the injuries, loss of liberty, and loss of his wheat and repair of motor vehicle. Were these losses incurred as a result of the actions by the defendants? The evidence by the plaintiff and his two witnesses was not all controverted. I am satisfied from the evidence of the plaintiff that he was going about his lawful business when the defendants pounced on him, arrested him and confined him at Ol Lorunga Division Headquarters where he remained for the night without any justification which is tantamount to false imprisonment.

According to *Halsbury's Laws of England 4<sup>th</sup> Edition page 606*, the learned authors have described false imprisonment in the following terms:

***“Any total restraint of the liberty of the person, for however short a time, by the use or threat of force or by confinement, is an imprisonment. To compel a person to remain in a given place is an imprisonment, but merely to obstruct a person attempting to pass in a particular direction or to prevent him from moving in any direction but one is not.*”**

***The gist of the action of false imprisonment is the mere imprisonment. The plaintiff need not prove that the imprisonment was unlawful or malicious, but establishes a prima facie case if he proves that he was imprisoned by the defendant; the onus then lies on the defendant of proving a justification.*”**

Having taken into consideration the evidence by the plaintiff which is uncontroverted, I find that the defendants are liable for the loss suffered by the plaintiff. On the issue on quantum, the plaintiff sustained injuries for which he was treated. According to the medical report the injuries suffered by the plaintiff are soft tissue injuries which have healed except for the scars. I would award the plaintiff kshs.100, 000/= for the pain and suffering. The plaintiff was falsely imprisoned and for that I would award him exemplary damages for unlawful arrest and detention by the 3<sup>rd</sup> defendant for a night I would award him kshs.25, 000/-. I have taken into account the case of **Gitau Vs Attorney General [1990] KLR page 13**

As regards the claim for special damages the plaintiff produced receipts for medical report and treatment for kshs.9,600/= which is also pleaded in the plaint. The plaintiff also produced the estimate of the sum

of money required to repair the motor vehicle kshs.201, 700/= and the loss of his wheat. Although the plaintiff did not produce the receipts, PW3 confirmed that he had sold to the plaintiff the 11 bags of wheat which he testified was bought at ksh.1, 500/= per bag giving a total of kshs.16, 500/=.

Judgment is therefore entered for the plaintiff as follows:

**General damages for pain and suffering – kshs.100, 000/=**

**Exemplary damages - kshs.25, 000/=**

**Medical treatment - kshs.9, 600/=**

**Repair of motor vehicle - Kshs.201, 700/=**

**Loss of wheat - kshs.16, 500/=**

**Total -Kshs. 352,800/=**

The plaintiff shall also be entitled to the cost of this suit.

It is so ordered.

Judgment read and signed this 25<sup>th</sup> May, 2007.

**M. KOOME**

**JUDGE**